

Contribution of the AT&T Assets or the transactions contemplated hereby or by any other Transaction Agreement. Except as disclosed in Schedule 17.1(e), there are no judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency, or by arbitration) against AT&T or any AT&T Seller and relating to the AT&T GCS Business or against any of the Contributed AT&T Subsidiaries that would individually or in the aggregate have an AT&T GCS Business MAE or that would prohibit the Contribution of the AT&T Assets or the transactions contemplated hereby or by any other Transaction Agreement.

(f) **Brokers and Finders.** Except for the fees and expenses payable to J.P. Morgan & Co., which fees and expenses will be paid by AT&T, none of AT&T or any of its Affiliates has employed any investment banker, broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement, any other Transaction Agreement or the transactions contemplated hereby or thereby.

(g) **Contributed AT&T Subsidiaries.**

(i) Schedule 17.1(g) sets forth a chart describing accurately and completely the organizational structure and ownership of the Contributed AT&T Subsidiaries and the authorized capitalization thereof.

(ii) Except as disclosed in Schedule 17.1(g), all of the outstanding shares of capital stock or other equity interests or other securities of each of the Contributed AT&T Subsidiaries has been, or if such Contributed

AT&T Subsidiary is not yet organized will, as of the Closing be, validly issued and is fully paid and nonassessable and, except for directors' qualifying shares and other nominal share interests issued to third parties to comply with Applicable Law, is owned by the AT&T Sellers or one or more of the Contributed AT&T Subsidiaries and, as of the Closing will be owned by a member of the Newco Group, in each case, free and clear of all Liens consisting of pledges, mortgages, security interests, claims, leases or voluntary liens.

(iii) Except as disclosed in Schedule 17.1(g), there are no outstanding options, warrants or other rights of any kind to acquire, securities convertible into or obligations to issue or transfer any shares of capital stock of any class of, or other equity interests or other securities of, any of the Contributed AT&T Subsidiaries.

(h) **Financial Statements.** AT&T has heretofore provided to BT true and complete copies of unaudited statements of operating results relating to the historical performance of the AT&T GCS Business (the "AT&T GCS Business Financials"). The AT&T GCS Business Financials are true and correct in all material respects, were extracted from and are consistent with the books and records used in the preparation of AT&T's audited financial statements for the relevant periods covered by such statements, and were prepared in a manner consistent with the accounting policies and practices of AT&T.

(i) **Undisclosed Liabilities; Adequacy of Assets.**

(i) Except as disclosed in Schedule 17.1(i), except for Excluded AT&T Liabilities, and except as reflected, reserved against or otherwise disclosed in the AT&T GCS Business Financials or incurred or arising in the ordinary course of the AT&T GCS Business subsequent to July 31, 1998, the AT&T GCS Business does not have any Liabilities that would be required to be reflected on a combined statement of net assets of the AT&T GCS Business if any such statement were to be prepared in accordance with U.S. GAAP and that would have an AT&T GCS Business MAE. No Contributed AT&T Subsidiary has any Liability that did not arise in the ordinary course of the AT&T GCS Business.

(ii) The AT&T Assets constitute all of the material assets, properties and rights owned by any AT&T Seller or any Contributed AT&T Subsidiary reasonably necessary for the conduct of the AT&T GCS Business as it is currently conducted, except (A) any of the foregoing hereafter disposed of in the ordinary course of business, (B) for any shared-use or multiparty facilities or Assets, (C) otherwise contemplated by the Transaction Agreements, and (D) as would not have an AT&T GCS Business MAE. To the knowledge of AT&T, the AT&T Sellers and the Contributed AT&T Subsidiaries do not lack any Asset necessary for the continued conduct of the AT&T GCS Business, as the same has heretofore been conducted, but giving effect to the transactions contemplated by this Agreement and the other Transaction Agreements, the absence of which would have an AT&T GCS

Business MAE. To the knowledge of AT&T, no AT&T Assets and no Assets of any Contributed AT&T Subsidiary are impaired in such a manner as would individually or in the aggregate have an AT&T GCS Business MAE.

(j) **Properties.**

(i) Schedule 15.1A includes a complete list of (A) all real properties owned by the AT&T Sellers and included in the AT&T Assets or owned by the Contributed AT&T Subsidiaries (the “AT&T Property Assets”), and (B) all real properties leased by the AT&T Sellers of which the leasehold rights are included in the AT&T Assets and all real property leased by the Contributed AT&T Subsidiaries and used by them in their conduct of the AT&T GCS Business, in each case involving an annual rental of \$10 million or more (the “AT&T Leases”).

(ii) An AT&T Seller or one of the Contributed AT&T Subsidiaries is the owner in fee simple of and has good and marketable title to all of the AT&T Property Assets listed in Schedule 15.1A and, except as set forth on Schedule 17.1(j), all such properties are owned free and clear of any Liens except Permitted Liens and except as would not have an AT&T GCS Business MAE.

(iii) Except as set forth in Schedule 17.1(j), each of the AT&T Leases is valid and enforceable in accordance with its terms and is in full force and effect, subject to applicable Bankruptcy Law or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law) and

except where the failure to be valid and enforceable or in full force and effect would not individually or in the aggregate have an AT&T GCS Business MAE.

(iv) To the knowledge of AT&T, there is no pending or threatened condemnation, expropriation, eminent domain or similar proceeding affecting all or any material portion of the AT&T Property Assets, and none of the AT&T Sellers or the Contributed AT&T Subsidiaries has received any written notice of any of the same that would individually or in the aggregate have an AT&T GCS Business MAE.

(v) Except as set forth in Schedule 17.1(j), none of the AT&T Sellers or Contributed AT&T Subsidiaries has received any notice in writing that any Default exists under any of the material covenants, conditions, restrictions, rights of way or easements, if any, affecting all or any portion of the AT&T Property Assets which are to be performed or complied with by the AT&T Sellers or the Contributed AT&T Subsidiaries as the owner of any of the AT&T Property Assets, except for such Defaults as would not individually or in the aggregate have an AT&T GCS Business MAE.

(vi) All components of all buildings, structures, fixtures and other improvements in, on or within the AT&T Property Assets and any real property that is the subject of the AT&T Leases are in a state of condition and repair which enables the relevant part of the AT&T GCS Business to be carried on in the relevant real property, subject to continued repair and replacement in accordance with past practice and except for any failures that

would not individually or in the aggregate have an AT&T GCS Business MAE.

(k) **Absence of Certain Changes.** Except as disclosed herein or in the Schedules to this Section 17.1 or as otherwise permitted under the Transaction Agreements, since July 31, 1998: (i) there has been no change in the AT&T GCS Business which, taken as a whole, constitutes an AT&T GCS Business MAE; (ii) there has been no physical damage, destruction or loss to any AT&T Assets or any Assets of any Contributed AT&T Subsidiary that would have an AT&T GCS Business MAE; and (iii) neither an AT&T Seller nor a Contributed AT&T Subsidiary nor any of their respective Affiliates, has, with respect to the AT&T GCS Business:

(A) incurred any material Liability except

(i) Liabilities included in the AT&T GCS Business Financials or (ii) Liabilities incurred since July 31, 1998, in the ordinary course of the business that would not individually or in the aggregate have an AT&T GCS Business MAE;

(B) discharged or satisfied any material Lien or paid any material Liability, except for such discharges, satisfactions or payments as were made in the ordinary course of business or as would not individually or in the aggregate have an AT&T GCS Business MAE;

(C) subjected to any Lien, other than Permitted Liens, any of the AT&T Assets or any Assets used by the Contributed AT&T Subsidiaries in the AT&T GCS Business except in the ordinary course of the AT&T GCS Business;

(D) (i) sold, assigned, transferred, conveyed, leased or otherwise disposed of, or agreed to sell, assign, transfer, convey, lease or otherwise dispose of any material Assets of the AT&T GCS Business, or (ii) except as permitted by this Agreement, including Section 19.2, entered into any material joint venture or partnership, or purchased or acquired any material line of business of any Person, in the case of clause (i) or (ii) except in the ordinary course of the AT&T GCS Business, or (iii) incurred any liability for any capital expenditures other than in the ordinary course of the AT&T GCS Business; or

(E) entered into any agreement which provides for or will result in any of the foregoing.

(I) **Permits.**

(i) Schedule 17.1(I) contains true and correct lists of all claims that the AT&T GCS Business has received in writing since January 1, 1996 from any Governmental Body alleging noncompliance by the AT&T GCS Business with any Applicable Law (other than Environmental Laws) in connection with the AT&T Sellers' or Contributed AT&T Subsidiaries' conduct of the AT&T GCS Business except for any such claims as would not individually or in the aggregate have an AT&T GCS Business MAE.

(ii) Except as disclosed in Schedule 17.1(1), all Permits necessary for the conduct of the AT&T GCS Business as presently conducted are in full force and effect and the AT&T Sellers and the Contributed AT&T Subsidiaries, as applicable, are in compliance therewith except for any failures

to have such Permits or any failures of any Permits to be in full force and effect or in compliance as would not individually or in the aggregate have an AT&T GCS Business MAE. Except as disclosed in Schedule 17.1(e), no Action is pending or, to AT&T's knowledge, threatened seeking the revocation or limitation of any such Permit except for any Action as would not individually or in the aggregate have an AT&T GCS Business MAE.

(m) **Compliance with Laws.** Except as disclosed in Schedule 17.1(m) and except with respect to Taxes and Environmental Laws (which are the subject of separate representations and warranties), the conduct of the AT&T GCS Business and the AT&T Property Assets complies and has since January 1, 1996 complied with all Applicable Law and judgments, orders or decrees applicable thereto, except for such failures as would not individually or in the aggregate have an AT&T GCS Business MAE.

(n) **Material Contracts.**

(i) For the purposes hereof, "AT&T Specified Contracts" shall mean (A) each contract to which any of the AT&T Sellers with respect to the AT&T GCS Business or any of the Contributed AT&T Subsidiaries is a party involving a likely annual expenditure of more than \$15 million or likely annual revenue of more than \$15 million and (B) each distribution, international correspondent, supply/requirements or customer agreement with respect to the AT&T GCS Business to which AT&T or any of its Affiliates is a party representing annual expenditures or revenues of more than \$25 million, or \$100 million over the term of the agreement.

(ii) Except as disclosed in Schedule 17.1(n), neither any of the AT&T Sellers in respect of the AT&T GCS Business nor any of the Contributed AT&T Subsidiaries is a party to any:

(A) agreement preventing any Contributed AT&T Subsidiary, or agreement that, after the Closing, will prevent the Newco Group, BT or any of their respective Affiliates, from competing with any other Person or engaging in any material business activity;

(B) guaranty of the obligations of any third party in excess of \$25 million in the aggregate;

(C) note, mortgage, indenture or other obligation, agreement or instrument for or relating to any lending or borrowing of \$25 million or more in the aggregate, except for lending or borrowing incurred by the AT&T Sellers for general corporate purposes which does not encumber any of the AT&T Assets or the Assets of the Contributed AT&T Subsidiaries;

(D) material contract with the United States or any other federal or foreign government other than any such contract entered in the ordinary course of business after the date hereof or any contract with AT&T or any of its Affiliates as of the date hereof; or

(E) other contract, agreement or arrangement, entered into other than in the ordinary course of business and requiring future payment or payments in excess of \$15 million annually which is not terminable on no more than 90 days' notice without material penalty.

(iii) With respect to each AT&T Specified Contract and with respect to each Contributed AT&T Contract, such AT&T Specified Contracts and the Contributed AT&T Contracts are, to the knowledge of AT&T, valid and binding (subject to applicable Bankruptcy Law or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law)), except for such failures to be valid and binding as would not individually or in the aggregate have an AT&T GCS Business MAE. None of the AT&T Sellers or Contributed AT&T Subsidiaries nor, to AT&T's knowledge, any other Person is in default under any such contracts except for such defaults as to which requisite waivers or consents have been or are being obtained or which would not individually or in the aggregate have an AT&T GCS Business MAE.

(o) **Environmental Matters.** Except as set forth on Schedule 17.1(o) and, with respect to Sections 17.1(o)(i), (ii), (iv) and (vi), except as would not, individually or in the aggregate, have an AT&T GCS Business MAE, since January 1, 1996 (i) the AT&T GCS Business is and has been conducted in accordance with all applicable Environmental Laws and Environmental Permits, (ii) all Environmental Permits are in full force and effect, and the AT&T GCS Business has made all appropriate filings for issuance or renewal of such Environmental Permits, (iii) none of the AT&T Sellers with respect to the AT&T GCS Business and no Contributed AT&T Subsidiary has been notified that it may be a "potentially responsible party" under the United States Comprehensive Environmental Response, Compensation and Liability Act, an "Appropriate Person"

who has liability for contaminated land clean-up under Part II of the U.K.

Environmental Act 1985, or may be the substantial equivalent under any applicable Environmental Law, (iv) none of the AT&T Sellers with respect to the AT&T GCS Business and no Contributed AT&T Subsidiary has received any written notice from any Governmental Body, or any other third party, that alleges that any of the AT&T Sellers with respect to the AT&T GCS Business or any Contributed AT&T Subsidiary is liable under or is not in compliance with applicable Environmental Laws or Environmental Permits, (v) there is no Action asserting any Environmental Liability in excess of \$10 million pending, or to the knowledge of AT&T, threatened, against any of the AT&T Sellers with respect to the AT&T GCS Business or any Contributed AT&T Subsidiary, and (vi) there has been no reportable release of any Hazardous Substances at, on, or about, under or within any AT&T Property Assets or, to the knowledge of AT&T, any other premises at the time when such premises were formerly owned, leased, operated, controlled or occupied by the AT&T GCS Business or by any predecessor of the AT&T GCS Business (other than releases not in violation of Environmental Law).

(p) Year 2000 Compliance.

(i) All computer software used in the AT&T GCS Business is or will be year 2000 compliant, meaning that neither the performance nor the functionality of the software or any service based on such software will be adversely affected by the advent of the year 2000 or any other year, or by the advent of September 9, 1999 or February 29, 2000, except for such failures to

be year 2000 compliant that would not individually or in the aggregate have an AT&T GCS Business MAE.

(ii) There is no fault with the functionality or operation of any software or other systems used in the AT&T GCS Business that detrimentally affects the quality of services being supplied to customers or the ongoing cost of maintenance and support of such software or systems in comparison with other equivalent software or systems, except such faults that would not individually or in the aggregate have an AT&T GCS Business MAE.

(q) **Tax Representations.** With respect to the AT&T GCS Business, the AT&T Assets and the Contributed AT&T Subsidiaries:

(i) Each of AT&T, the AT&T Sellers and the Contributed AT&T Subsidiaries has complied in all material respects with applicable tax regulations, and has duly and timely filed all United States federal, foreign, state, county and local Tax Returns required to be filed by it for all taxable periods or portions thereof through the date of this Agreement, and will duly and timely file such Returns as are required to be filed with respect to the taxable periods ending on or before the Closing Date, unless, in each case, the failure to do so would not have an AT&T GCS Business MAE. Such Tax Returns have been prepared, or will be prepared, in accordance with all applicable government regulations and are, or will be, accurate and complete in all respects, except where a failure so to prepare such Returns would not individually or in the aggregate have an AT&T GCS Business MAE. Each of

AT&T, the AT&T Sellers and the Contributed AT&T Subsidiaries has timely paid or adequately provided for (or will timely pay or adequately provide for) all Taxes due and payable by such Person (whether or not shown on any Returns), and each of AT&T, the AT&T Sellers and the Contributed AT&T Subsidiaries have adequately provided (or will adequately provide) for all Taxes which would be due with respect to the current taxable year if the current taxable year ended at the close of business on the Closing Date, except for any such failures as would not individually or in the aggregate have an AT&T GCS Business MAE.

(ii) Except as set forth on Schedule 17.1(q), no proposed Taxes or Tax deficiencies have been asserted against AT&T, the AT&T Sellers or the Contributed AT&T Subsidiaries relating to the AT&T GCS Business or any of the Contributed AT&T Subsidiaries except those that have been paid in full or those which if determined adversely to AT&T, the AT&T Sellers or the Contributed AT&T Subsidiaries would not individually or in the aggregate have an AT&T GCS Business MAE.

(iii) Except as set forth on Schedule 17.1(q), there are no and have been no tax sharing or other agreements or arrangements regarding the allocation of liability of Taxes or similar matters between or among AT&T or the AT&T Sellers, on the one hand, and any of the Contributed AT&T Subsidiaries, on the other hand.

(iv) Except as set forth on Schedule 17.1(q), (A) there are no pending requests for rulings from any Taxing authority relating to any material

issue affecting any AT&T Asset or Contributed AT&T Subsidiary, (B) there are no outstanding subpoenas or written requests for information by any Taxing authority with respect to Taxes relating to any material issue affecting any AT&T Asset or Contributed AT&T Subsidiary, and (C) to the knowledge of AT&T or the AT&T Sellers, there are no proposed reassessments by any Taxing authority of any property that constitutes an AT&T Asset, or is owned or leased by any AT&T Seller or any Contributed AT&T Subsidiaries.

(v) Except as set forth on Schedule 17.1(q), there are no written agreements in effect to extend (A) the time to file any Tax Return of any Contributed AT&T Subsidiaries or (B) the period of limitations for the assessment or collection of any Taxes of any Contributed AT&T Subsidiaries.

(vi) Except as set forth on Schedule 17.1(q), there is no pending Tax audit, examination, investigation or similar proceeding involving any liability for Taxes relating to any Contributed AT&T Subsidiaries or the AT&T Assets, which would, if determined adversely to AT&T, the AT&T Sellers or the Contributed AT&T Subsidiaries, have an AT&T GSC Business MAE, nor have any of the Contributed AT&T Subsidiaries, AT&T or any AT&T Seller entered into any closing agreement within the meaning of Section 7121 of the Code, or any analogous provision of state, local or foreign law relating to any material issue affecting any AT&T Asset or Contributed AT&T Subsidiary.

(vii) Except as set forth on Schedule 17.1(q), the Income Tax Returns of each Contributed AT&T Subsidiary have either been examined by

the relevant Taxing authority or the periods covered by such Income Tax Returns have been closed by an applicable statute of limitations.

(viii) Except as set forth on Schedule 17.1(q), no Contributed AT&T Subsidiary is or was a member of a U.S. Consolidated Group.

(r) **Conduct of AT&T GCS Business.** On the Closing Date, except as disclosed on Schedule 17.1(r) or otherwise permitted or required by this Agreement, including Schedule 2.2, or to effect the Contribution and the transactions contemplated in connection therewith the following shall be true and correct with respect to the period from the date hereof to and including the Closing Date:

(i) AT&T will have caused the AT&T GCS Business to have been operated in the ordinary course;

(ii) AT&T will have caused each Contributed AT&T Subsidiary not to have (A) amended its constitutive or equivalent documents; (B) except as otherwise contemplated hereby (including as may be necessary to transfer any non-AT&T Assets from any Contributed AT&T Subsidiary) and except for cash dividends or distributions, declared or paid any dividend or distribution with respect to its capital stock or share capital; or (C) repurchased its capital stock or share capital;

(iii) AT&T will have caused the AT&T Sellers in respect of the AT&T GCS Business and the Contributed AT&T Subsidiaries not to have (A) created, incurred or assumed any material long-term or short-term Indebtedness, except (1) in connection with replacements of maturing or other Indebtedness, (2) intercompany loans and advances between a Contributed

AT&T Subsidiary and AT&T or any of its Affiliates and (3) Indebtedness incurred in the ordinary course of business; (B) assumed, guaranteed, endorsed or otherwise have become liable or responsible (whether directly, contingently or otherwise) for any material obligations of any other Person other than any of the Contributed AT&T Subsidiaries; or (C) made any material loans, advances or capital contributions to or investments in, any Person other than any of the Contributed AT&T Subsidiaries (except as permitted by this Agreement or any other Transaction Agreement and except for customary loans, advances or capital contributions consistent with past practice or in accordance with contractual arrangements existing as the date hereof and set forth on Schedule 17.1(r) and except intercompany loans and advances between the Contributed AT&T Subsidiaries and AT&T or any of its Affiliates), except for any of the foregoing that shall not become obligations of the Newco Group or that shall have been settled or otherwise eliminated on or prior to the Closing;

(iv) except as required by Applicable Law or contractual obligations existing on the date hereof and set forth on Schedule 17.1(r) or as permitted under or contemplated by this Agreement, any of the Local Purchase Agreements or any of the other Transaction Agreements, AT&T will have caused (1) the AT&T Sellers not to have sold, transferred or otherwise have disposed of any AT&T Assets, and the Contributed AT&T Subsidiaries not to have sold, transferred or otherwise have disposed of any of their Assets, with a total value of more than \$250 million in the aggregate, other than in the

ordinary course of business or (2) the AT&T Sellers not to have created any Lien, except a Permitted Lien, on the AT&T Assets other than in the ordinary course of business, or the Contributed AT&T Subsidiaries not to have created any Lien, except a Permitted Lien, on any of their Assets other than in the ordinary course of business;

(v) AT&T will have caused all transactions involving AT&T and any of its Affiliates, on the one hand, and the Contributed AT&T Subsidiaries, on the other hand, or otherwise involving AT&T and its Affiliates and the AT&T GCS Business to have been on an arm's length basis;

(vi) subject to the terms and conditions of this Agreement, to any effects arising principally from having entered into the Term Sheet, dated July 24, 1998, between AT&T and BT (the "Term Sheet"), this Agreement or the other Transaction Agreements and consistent with operating in the ordinary course, AT&T will have used and will have caused the AT&T Sellers and the Contributed AT&T Subsidiaries to have used, its or their reasonable commercial efforts to preserve the AT&T GCS Business intact, and to preserve the goodwill of customers, suppliers and others having business relations with the AT&T GCS Business; and

(vii) AT&T will have caused the AT&T Sellers in respect of the AT&T GCS Business and the Contributed AT&T Subsidiaries not to have agreed to take any action or refrain from taking any action with respect to the AT&T GCS Business described in this Section 17.1(r).

(s) **Cables.** There is no fault with the functionality or operation of any cable used in the AT&T GCS Business that detrimentally affects the quality of services being supplied to customers or the on-going cost of maintenance and support of such cable in comparison with other equivalent cables, except for such faults that would not individually or in aggregate have an AT&T GCS Business MAE.

17.2 Representations and Warranties of BT. BT represents and warrants to the AT&T Parties and, with respect to Sections 17.2(a) through (q) and 17.2(s), to Thistle BV, as follows:

(a) **Organization and Standing.** BT is a public limited company incorporated under the laws of England and Wales, BT Holdings is a *Besloten Vennootschap* organized under the laws of The Netherlands, and Concert is an unlimited company incorporated under the laws of England and Wales, and each has all requisite corporate power and corporate authority necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted. Each of the other BT Sellers and the Contributed BT Subsidiaries is duly organized and validly existing and, with respect to those Persons organized under the laws of states of the United States, in good standing, under the laws of the jurisdiction of its organization, except for such failure to be in good standing which would not, individually or in the aggregate have a Venture Business Material Adverse Effect. Each of the other BT Sellers and the Contributed BT Subsidiaries (i) has all requisite corporate, partnership or limited liability company power and authority to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted, and (ii) is duly qualified to transact

business in each jurisdiction in which the nature of property owned or leased by it or the conduct of its business requires it to be so qualified, except for such failures to be so qualified as would not individually or in the aggregate have a Venture Business Material Adverse Effect.

(b) **Authorization; Validity.** Each of BT and BT Holdings has all requisite corporate power and corporate authority to execute and deliver this Agreement and the IPR Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Each of BT, BT Holdings and their Affiliates will have at the Closing all requisite corporate, partnership or limited liability company power and authority to execute and deliver the Transaction Agreements to be executed by it on or prior to the Closing, to perform its obligations under such Transaction Agreements to which it is a party and to consummate the transactions contemplated thereby. The execution, delivery and performance by each of BT and BT Holdings of this Agreement and the IPR Agreement, and the consummation by each of BT and BT Holdings of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action on the part of BT and BT Holdings and the execution, delivery and performance by each of BT, BT Holdings and their Affiliates of the Transaction Agreements to be executed by it on or prior to the Closing, and the consummation of the transactions contemplated thereby, will, prior to such execution and delivery, be duly authorized by all necessary corporate, partnership or limited liability company action on the part of BT, BT Holdings or such Affiliates and no other corporate, partnership or limited liability company proceedings or actions on the part of any of

BT, BT Holdings or such Affiliates, or their respective boards of directors or other governing bodies or stockholders, partners or members will be necessary therefor. This Agreement and the IPR Agreement have been, and the Transaction Agreements to be executed by BT, BT Holdings and their Affiliates on or prior to the Closing will, when executed and delivered, be, duly executed and delivered by BT, BT Holdings and their Affiliates, as applicable. Assuming the due execution and delivery hereof and thereof by the other parties thereto, this Agreement and the IPR Agreement constitute, and the other Transaction Agreements to be executed by BT, BT Holdings or their Affiliates on or prior to the Closing will, when duly executed and delivered, constitute, legal, valid and binding obligations of BT, BT Holdings and such Affiliates that are parties thereto, enforceable against it or them in accordance with their respective terms.

(c) **No Conflicts.** Except as set forth on Schedule 17.2(c), the execution, delivery and performance by each of BT and BT Holdings of this Agreement and the IPR Agreement, the consummation of the transactions contemplated hereby and thereby and the compliance with the terms hereof and thereof do not, and the execution, delivery and performance by each of BT, BT Holdings and their Affiliates of the other Transaction Agreements to be executed by it on or prior to the Closing, the consummation of the transactions contemplated by such Transaction Agreements and compliance with the terms of such Transaction Agreements will not at the Closing, conflict with, or constitute or result in any Default under (i) any provision of the memorandum or articles of association or bylaws of BT, the articles of association of BT Holdings or any provision of the

constitutive or equivalent documents of any such Affiliate, (ii) any order, arbitration award, judgment, injunction or decree against, or binding upon, any of BT, BT Holdings or any such Affiliate or upon its properties or businesses, (iii) any instrument, contract, mortgage, charge or other agreement to which BT, BT Holdings or any such Affiliate is a party or by which any of its Assets is bound, or (iv) under any Applicable Law with respect to BT, BT Holdings or any such Affiliates, or any of their respective Assets (except, with respect to clauses (ii), (iii) and (iv), for such conflicts or Defaults that, individually or in the aggregate, would not have a material effect on the ability of BT, BT Holdings or any of their Affiliates, as applicable, to perform in all material respects its obligations under this Agreement and the other Transaction Agreements to which it is a party in accordance with their respective terms and would not have a Venture Business Material Adverse Effect).

(d) **Consents and Approvals.** Except as provided in Schedule 17.2(d), no Third Party Approval and no Governmental Approval is required to be obtained or made by BT, BT Holdings or any of their Affiliates in connection with the execution, delivery and performance of this Agreement and the other Transaction Agreements and the transactions contemplated hereby and thereby, except for Third Party Approvals or Governmental Approvals, the absence of which, individually or in the aggregate, would not have a material effect on the ability of BT, BT Holdings or their Affiliates, as applicable, to perform in all material respects its obligations under this Agreement and the other Transaction Agreements to which it is a party in accordance with their respective terms and would not have a Venture Business Material Adverse Effect.

(e) **Litigation.**

(i) Except as set forth in Schedule 17.2(e), there are, as of the date hereof, no Actions pending or, to the knowledge of BT, threatened against BT or any of its Affiliates or any property of BT or of any such Affiliate, including Intellectual Property Rights, in any court or before any arbitrator of any kind or in or before or by any Governmental Body, except Actions which, individually or in the aggregate, are not reasonably likely to, (x) have a material adverse effect on BT or BT Holdings or (y) restrain, enjoin or otherwise prevent or materially delay the consummation of the transactions contemplated hereby or by any other Transaction Agreement, in each case, except with respect to Taxes, which are the subject of separate representations and warranties.

(ii) Schedule 17.2(e) contains a list and brief description (other than with respect to any Tax matters) as of the date hereof of (x) all pending Actions against any of the BT Sellers relating to their conduct of the BT GCS Business or against any of the Contributed BT Subsidiaries and which individually involve an amount in excess of \$10 million, (y) all threatened Actions against any of the BT Sellers relating to their conduct of the BT GCS Business or against any of the Contributed BT Subsidiaries, in each case of which BT has knowledge and which individually involve an amount in excess of \$10 million, and (z) all writs, injunctions, orders, and decrees of any Governmental Bodies to which any of the BT Sellers is subject relating to their conduct of the BT GCS Business or against any of the Contributed BT

Subsidiaries, in each case which would, individually or in the aggregate, have a Material Adverse Effect on the BT GCS Business or on the Contributed BT Subsidiaries taken as a whole (collectively, a **"BT GCS Business MAE"**).

(iii) Except as disclosed in Schedule 17.2(e) and except with respect to Taxes and Environmental Laws (which are the subject of separate representations and warranties), there are no Actions pending or, to BT's knowledge, threatened against any BT Seller relating to the BT GCS Business or against any Contributed BT Subsidiary that would individually or in the aggregate have a BT GCS Business MAE or prohibit the Contribution of the BT Assets or the transactions contemplated hereby or by any other Transaction Agreement. Except as disclosed in Schedule 17.2(e), there are no judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency, or by arbitration) against BT or any BT Seller and relating to the BT GCS Business or against any of the Contributed BT Subsidiaries that would individually or in the aggregate have a BT GCS Business MAE or that would prohibit the Contribution of the BT Assets or the transactions contemplated hereby or by any other Transaction Agreement.

(f) **Brokers and Finders.** Except for the fees and expenses payable to N M Rothschild & Sons Ltd., Rothschild Inc. and Morgan Stanley Dean Witter & Co. Inc., which fees and expenses will be paid by BT, none of BT or any of its Affiliates has employed any investment banker, broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement

which would be entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement, any other Transaction Agreement or the transactions contemplated hereby or thereby.

(g) Contributed BT Subsidiaries.

(i) Schedule 17.2(g) sets forth a chart describing accurately and completely the organizational structure and ownership of the Contributed BT Subsidiaries and the authorized capitalization thereof.

(ii) Except as disclosed in Schedule 17.2(g), all of the outstanding shares of capital stock or other equity interests or other securities of each of the Contributed BT Subsidiaries has been, or if such Contributed BT Subsidiary is not yet organized will, as of the Closing be, validly issued and is fully paid and nonassessable and, except for directors' qualifying shares and other nominal share interests issued to third parties to comply with Applicable Law, is owned by the BT Sellers or one or more of the Contributed BT Subsidiaries and, as of the Closing will be owned by a member of the Newco Group in each case, free and clear of all Liens consisting of pledges, mortgages, security interests, claims, leases or voluntary liens.

(iii) Except as disclosed in Schedule 17.2(g), there are no outstanding options, warrants or other rights of any kind to acquire, securities convertible into or obligations to issue or transfer any shares of capital stock of any class of, or other equity interests or other securities of, any of the Contributed BT Subsidiaries.

(h) **Financial Statements.**

(i) BT has heretofore provided to AT&T true and complete copies of unaudited statements of operating results relating to the historical performance of the BT GCS Business, other than Concert and its Current Subsidiaries (the "**BT GCS Business Financials**"). The BT GCS Business Financials are true and correct in all material respects, were extracted from and are consistent with the books and records used in the preparation of BT's audited financial statements for the relevant periods covered by such statements, and were prepared in a manner consistent with the accounting policies and practices of BT.

(ii) The audited balance sheet of Concert as of March 31, 1998, and the related profit and loss account, revenue account and cashflow statement for the year then ended, including the footnotes thereto, which have been audited by PricewaterhouseCoopers, independent auditors to Concert (the "**Concert Financials**"), and which have heretofore been delivered to AT&T, have been prepared in accordance with U.K. GAAP consistently applied, and give a true and fair view of the assets, liabilities and trading position of Concert as of March 31, 1998 and of its profit and cashflow for the year then ended.

(iii) Except for the Assumed Concert Purchase Debt, neither Concert Holdings nor BT IntermediateCo has or is subject to any Liabilities or has any Assets except as expressly contemplated by this Agreement.

(iv) Schedule 17.2(h)A is an unaudited consolidated balance sheet of Concert and its Subsidiaries as of September 30, 1998. Schedule 17.2(h)B is an unaudited balance sheet of Concert Holdings as of September 30, 1998. Each such balance sheet was prepared in a manner consistent with the accounting policies and practices of Concert or Concert Holdings, as appropriate, and reflects the financial position as of such date of Concert and its Subsidiaries or Concert Holdings, as appropriate. The matters set forth in Sections 17.2(r)(iii)(A) and (B) shall be true and correct on the Closing Date with respect to the period from September 30, 1998 to and including the Closing Date.

(i) **Undisclosed Liabilities; Adequacy of Assets.**

(i) Except as disclosed in Schedule 17.2(i), except for Excluded BT Liabilities, and except as reflected, reserved against or otherwise disclosed in the BT GCS Business Financials or the Concert Financials or incurred or arising in the ordinary course of the BT GCS Business subsequent to July 31, 1998, the BT GCS Business does not have any Liabilities that would be required to be reflected on a combined statement of net assets of the BT GCS Business if any such statement were to be prepared in accordance with U.K. GAAP and that would have a BT GCS Business MAE. No Contributed BT Subsidiary has any Liability that did not arise in the ordinary course of the BT GCS Business.

(ii) The BT Assets constitute all of the material assets, properties and rights owned by any BT Seller or any Contributed BT

Subsidiary reasonably necessary for the conduct of the BT GCS Business as it is presently conducted, except (A) for any of the foregoing hereafter disposed of in the ordinary course of business, (B) for any shared-use or multiparty facilities or Assets, (C) as otherwise contemplated by the Transaction Agreements, and (D) as would not have a BT GCS Business MAE. To the knowledge of BT, the BT Sellers and the Contributed BT Subsidiaries do not lack any Asset necessary for the continued conduct of the BT GCS Business, as the same has heretofore been conducted, but giving effect to the transactions contemplated by this Agreement and the other Transaction Agreements, the absence of which would have a BT GCS Business MAE. To the knowledge of BT, no BT Assets and no Assets of any Contributed BT Subsidiary are impaired in such a manner as would individually or in the aggregate have a BT GCS Business MAE.

(j) **Properties.**

(i) Schedule 15.1B includes a complete list of (A) all real properties owned by the BT Sellers and included in the BT Assets or owned by the Contributed BT Subsidiaries (the “**BT Property Assets**”), and (B) all real properties leased by the BT Sellers of which the leasehold rights are included in the BT Assets and all real property leased by the Contributed BT Subsidiaries and used by them in their conduct of the BT GCS Business, in each case involving an annual rental of \$10 million or more (the “**BT Leases**”).

(ii) A BT Seller or one of the Contributed BT Subsidiaries is the owner in fee simple of and has good and marketable title to all of the BT Property Assets listed in Schedule 15.1B and, except as set forth on Schedule 17.2(j), all such properties are owned free and clear of any Liens except Permitted Liens and except as would not have a BT GCS Business MAE.

(iii) Except as set forth in Schedule 17.2(j), each of the BT Leases is valid and enforceable in accordance with its terms and is in full force and effect, subject to applicable Bankruptcy Law or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law) and except where the failure to be valid and enforceable or in full force and effect would not individually or in the aggregate have a BT GCS Business MAE.

(iv) To the knowledge of BT, there is no pending or threatened order, resolution or published proposal for the compulsory acquisition of, or similar proceeding affecting, all or any material portion of the BT Property Assets, and none of the BT Sellers or the Contributed BT Subsidiaries has received any written notice of any of the same that would individually or in the aggregate have a BT GCS Business MAE.

(v) Except as set forth in Schedule 17.2(j), none of the BT Sellers or Contributed BT Subsidiaries has received any notice in writing that any Default exists under any of the material covenants, conditions, restrictions, rights of way or easements, if any, affecting all or any portion of the BT

Property Assets which are to be performed or complied with by the BT Sellers or the Contributed BT Subsidiaries as the owner of any of the BT Property Assets, except for such Defaults as would not individually or in the aggregate have a BT GCS Business MAE.

(vi) All components of all buildings, structures, fixtures and other improvements in, on or within the BT Property Assets and any real property that is the subject of the BT Leases are in a state of condition and repair which enables the relevant part of the BT GCS Business to be carried on in the relevant real property, subject to continued repair and replacement in accordance with past practice and except for any failures that would not individually or in the aggregate have a BT GCS Business MAE.

(k) **Absence of Certain Changes.** Except as disclosed herein or in the Schedules to this Section 17.2 or as otherwise permitted under the Transaction Agreements, since July 31, 1998: (i) there has been no change in the BT GCS Business which, taken as a whole, constitutes a BT GCS Business MAE; (ii) there has been no physical damage, destruction or loss to any BT Assets or any Assets of any Contributed BT Subsidiary that would have a BT GCS Business MAE; and (iii) neither a BT Seller nor a Contributed BT Subsidiary nor any of their respective Affiliates, has, with respect to the BT GCS Business:

(A) incurred any material Liability except

(A) Liabilities included in the BT GCS Business Financials or the balance sheet included in the Concert Financials, or (B) Liabilities incurred since

July 31, 1998, in the ordinary course of the business that would not individually or in the aggregate have a BT GCS Business MAE;

(B) discharged or satisfied any material Lien or paid any material Liability, except for such discharges, satisfactions or payments as were made in the ordinary course of business or as would not individually or in the aggregate have a BT GCS Business MAE;

(C) subjected to any Lien, other than Permitted Liens, any of the BT Assets or any Assets used by the Contributed BT Subsidiaries in the BT GCS Business except in the ordinary course of the BT GCS Business;

(D) (i) sold, assigned, transferred, conveyed, leased or otherwise disposed of, or agreed to sell, assign, transfer, convey, lease or otherwise dispose of any material Assets of the BT GCS Business, or (ii) except as permitted by this Agreement, including Section 19.2, entered into any material joint venture or partnership, or purchased or acquired any material line of business of any Person, in the case of clause (i) or (ii) except in the ordinary course of the BT GCS Business, or (iii) incurred any liability for any capital expenditures other than in the ordinary course of the BT GCS Business; or

(E) entered into any agreement which provides for or will result in any of the foregoing.

(I) **Permits.**

(i) Schedule 17.2(1) contains true and correct lists of all claims that the BT GCS Business has received in writing since January 1, 1996

from any Governmental Body alleging noncompliance by the BT GCS Business with any Applicable Law (other than Environmental Laws) in connection with the BT Sellers' or Contributed BT Subsidiaries' conduct of the BT GCS Business except for any such claims as would not individually or in the aggregate have a BT GCS Business MAE.

(ii) Except as disclosed in Schedule 17.2(1), all Permits necessary for the conduct of the BT GCS Business as presently conducted are in full force and effect and the BT Sellers and the Contributed BT Subsidiaries, as applicable, are in compliance therewith except for any failures to have such Permits or any failures of any Permits to be in full force and effect or in compliance as would not individually or in the aggregate have a BT GCS Business MAE. Except as disclosed in Schedule 17.2(e), no Action is pending or, to BT's knowledge, threatened seeking the revocation or limitation of any such Permit except for any Action as would not individually or in the aggregate have a BT GCS Business MAE.

(m) **Compliance with Laws.** Except as disclosed in Schedule 17.2(m) and except with respect to Taxes and Environmental Laws (which are the subject of separate representations and warranties), the conduct of the BT GCS Business and the BT Property Assets complies and has since January 1, 1996 complied with all Applicable Law and judgments, orders or decrees applicable thereto, except for such failures as would not individually or in the aggregate have a BT GCS Business MAE.

(n) **Material Contracts.**

(i) For the purposes hereof, **"BT Specified Contracts"** shall mean (A) each contract to which any of the BT Sellers with respect to the BT GCS Business or any of the Contributed BT Subsidiaries is a party involving a likely annual expenditure of more than \$15 million or likely annual revenue of more than \$15 million and (B) each distribution, international correspondent, supply/requirements or customer agreement with respect to the BT GCS Business to which BT or any of its Affiliates is a party representing annual expenditures or revenues of more than \$25 million, or \$100 million over the term of the agreement.

(ii) Except as disclosed in **Schedule 17.2(n)**, neither any of the BT Sellers in respect of the BT GCS Business nor any of the Contributed BT Subsidiaries is a party to any:

(A) agreement preventing any Contributed BT Subsidiary, or agreement that, after the Closing, will prevent the Newco Group, AT&T or any of their respective Affiliates, from competing with any other Person or engaging in any material business activity;

(B) guaranty of the obligations of any third party in excess of \$25 million in the aggregate;

(C) note, mortgage, indenture or other obligation, agreement or instrument for or relating to any lending or borrowing of \$25 million or more in the aggregate, except for lending or borrowing

incurred by the BT Sellers for general corporate purposes which does not encumber any of the BT Assets or the Assets of the Contributed BT Subsidiaries;

(D) material contract with the U.K. or any other federal or foreign government other than any such contract entered in the ordinary course of business after the date hereof or any contract with BT or any of its Affiliates as of the date hereof; or

(E) other contract, agreement or arrangement, entered into other than in the ordinary course of business and requiring future payment or payments in excess of \$15 million annually which is not terminable on no more than 90 days' notice without material penalty.

(iii) With respect to each BT Specified Contract and with respect to each Contributed BT Contract, such BT Specified Contracts and the Contributed BT Contracts are, to the knowledge of BT, valid and binding (subject to applicable Bankruptcy Law or other laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether in equity or at law)), except for such failures to be valid and binding as would not individually or in the aggregate have a BT GCS Business MAE. None of the BT Sellers or Contributed BT Subsidiaries nor, to BT's knowledge, any other Person is in default under any such contracts except for such defaults as to which requisite waivers or consents have been or are being obtained or which would not individually or in the aggregate have a BT GCS Business MAE.

(o) **Environmental Matters.** Except as set forth on Schedule 17.2(o) and, with respect to Sections 17.2(o)(i), (ii), (iv) and (vi), except as would not, individually or in the aggregate, have a BT GCS Business MAE, since January 1, 1996 (i) the BT GCS Business is and has been conducted in accordance with all applicable Environmental Laws and Environmental Permits, (ii) all Environmental Permits are in full force and effect, and the BT GCS Business has made all appropriate filings for issuance or renewal of such Environmental Permits, (iii) none of the BT Sellers with respect to the BT GCS Business and no Contributed BT Subsidiary has been notified that it may be a “potentially responsible party,” under the United States Comprehensive Environmental Response, Compensation and Liability Act, an “Appropriate Person” who has liability for contaminated land clean-up under Part II of the U.K. Environmental Act 1985, or may be the substantial equivalent under any applicable Environmental Law, (iv) none of the BT Sellers with respect to the BT GCS Business and no Contributed BT Subsidiary has received any written notice from any Governmental Body, or any other third party, that alleges that any of the BT Sellers with respect to the BT GCS Business or any Contributed BT Subsidiary is liable under or is not in compliance with applicable Environmental Laws or Environmental Permits, (v) there is no Action asserting any Environmental Liability in excess of \$10 million pending, or to the knowledge of BT, threatened, against any of the BT Sellers with respect to the BT GCS Business or any Contributed BT Subsidiary, and (vi) there has been no reportable release of any Hazardous Substances at, on, or about, under or within any BT Property Assets or, to the knowledge of BT, any other premises at the time when such premises were formerly

owned, leased, operated, controlled or occupied by the BT GCS Business or by any predecessor of the BT GCS Business (other than releases not in violation of any Environmental Law).

(p) Year 2000 Compliance.

(i) All computer software used in the BT GCS Business is or will be year 2000 compliant, meaning that neither the performance nor the functionality of the software or any service based on such software will be adversely affected by the advent of the year 2000 or any other year, or by the advent of September 9, 1999 or February 29, 2000, except for such failures to be year 2000 compliant that would not individually or in the aggregate have a BT GCS Business MAE.

(ii) There is no fault with the functionality or operation of any software or other systems used in the BT GCS Business that detrimentally affects the quality of services being supplied to customers or the ongoing cost of maintenance and support of such software or systems in comparison with other equivalent software or systems, except such faults that would not individually or in the aggregate have a BT GCS Business MAE.

(q) Tax Representations. With respect to the BT GCS Business, the BT Assets and the Contributed BT Subsidiaries:

(i) Each of BT, the BT Sellers and the Contributed BT Subsidiaries has complied in all material respects with applicable tax regulations, and has duly and timely filed all United Kingdom, United States federal, foreign, state, county and local Tax Returns required to be filed by it

for all taxable periods or portions thereof through the date of this Agreement, and will duly and timely file such Returns as are required to be filed with respect to the taxable periods ending on or before the Closing Date, unless, in each case, the failure to do so would not have a BT GCS Business MAE. Such Tax Returns have been prepared, or will be prepared, in accordance with all applicable government regulations and are, or will be, accurate and complete in all respects, except where a failure so to prepare such Returns would not individually or in the aggregate have a BT GCS Business MAE. Each of BT, the BT Sellers and the Contributed BT Subsidiaries has timely paid or adequately provided for (or will timely pay or adequately provide for) all Taxes due and payable by such Person (whether or not shown on any Returns), and each of BT, the BT Sellers and the Contributed BT Subsidiaries have adequately provided (or will adequately provide) for all Taxes which would be due with respect to the current taxable year if the current taxable year ended at the close of business on the Closing Date, except for any such failures as would not individually or in the aggregate have a BT GCS Business MAE.

(ii) Except as set forth in Schedule 17.2(q), no proposed Taxes or Tax deficiencies have been asserted against BT, the BT Sellers or the Contributed BT Subsidiaries relating to the BT GCS Business or any of the Contributed BT Subsidiaries except those that have been paid in full or those which if determined adversely to BT, the BT Sellers or the Contributed BT

Subsidiaries would not individually or in the aggregate have a BT GCS Business MAE.

(iii) Except as set forth on Schedule 17.2(q), there are no and have been no tax sharing or other agreements or arrangements regarding the allocation of liability of Taxes, reimbursement for group relief or consortium relief or similar matters between or among BT or the BT Sellers, on the one hand, and any of the Contributed BT Subsidiaries, on the other hand.

(iv) Except as set forth on Schedule 17.2(q), (A) there are no pending requests for rulings from any Taxing authority relating to any material issue affecting any BT Asset or Contributed BT Subsidiary, (B) there are no outstanding subpoenas or written requests for information by any Taxing authority with respect to Taxes relating to any material issue affecting any BT Asset or Contributed BT Subsidiary, and (C) to the knowledge of BT or the BT Sellers, there are no proposed reassessments by any Taxing authority of any property that constitutes a BT Asset, or is owned or leased by any BT Seller or any Contributed BT Subsidiaries.

(v) Except as set forth on Schedule 17.2(q), there are no written agreements in effect to extend (A) the time to file any Tax Return of any Contributed BT Subsidiaries or (B) the period of limitations for the assessment or collection of any Taxes of any Contributed BT Subsidiaries.

(vi) Except as set forth on Schedule 17.2(q), there is no pending Tax audit, examination, investigation or similar proceeding involving any liability for Taxes relating to any Contributed BT Subsidiaries or the BT

Assets which would, if determined adversely to BT, the BT Sellers or the Contributed BT Subsidiaries have a BT GCS Business MAE, nor have any of the Contributed BT Subsidiaries, BT or any BT Seller entered into any closing agreement within the meaning of Section 7121 of the Code, or any analogous provision of state, local or foreign law relating to any material issue affecting any BT Asset or Contributed BT Subsidiary.

(vii) Except as set forth on Schedule 17.2(q), the Income Tax Returns of each Contributed BT Subsidiary have either been examined by the relevant Taxing authority or the periods covered by such Income Tax Returns have been closed by an applicable statute of limitations.

(viii) No Contributed BT Subsidiary is or was a member of a U.S. Consolidated Group.

(ix) There are no transactions which have been carried out by the Contributed BT Subsidiaries in respect of which special consent was required from H.M. Treasury under the provisions of section 765 of the U.K. Income and Corporation Taxes Act 1988 without such consent having first been obtained and all relevant information supplied to H.M. Treasury.

(r) **Conduct of BT GCS Business.** On the Closing Date, except as disclosed on Schedule 17.2(r) or otherwise permitted or required by this Agreement, including Schedule 2.2, or to effect the Contribution and the transactions contemplated in connection therewith, the following shall be true and correct with respect to the period from the date hereof to and including the Closing Date:

(i) BT will have caused the BT GCS Business to have been operated in the ordinary course;

(ii) BT will have caused each Contributed BT Subsidiary not to have (A) amended its constitutive or equivalent documents; (B) subject to Section 17.2(u), except as otherwise contemplated hereby (including as may be necessary to transfer any non-BT Assets from any Contributed BT Subsidiary other than BT IntermediateCo, Concert Holdings or any of their Subsidiaries) and except for cash dividends or distributions, declared or paid any dividend or distribution with respect to its capital stock or share capital; or (C) repurchased its capital stock or share capital;

(iii) BT will have caused the BT Sellers in respect of the BT GCS Business and the Contributed BT Subsidiaries not to have (A) created, incurred or assumed any long-term or short-term Indebtedness, except pursuant to Section 15.7(a); (B) assumed, guaranteed, endorsed or otherwise have become liable or responsible (whether directly, contingently or otherwise) for any material obligations of any other Person other than any of the Contributed BT Subsidiaries; or (C) made any material loans, advances or capital contributions to or investments in, any Person other than any of the Contributed BT Subsidiaries (except as permitted by this Agreement or any other Transaction Agreement and except for customary loans, advances or capital contributions consistent with past practice or in accordance with contractual arrangements existing as the date hereof and set forth on Schedule 17.2(r) and except intercompany loans and advances between the

Contributed BT Subsidiaries and BT or any of its Affiliates), except for any of the foregoing that shall not become obligations of the Newco Group or that shall have been settled or otherwise eliminated on or prior to the Closing;

(iv) except as required by Applicable Law or contractual obligations existing on the date hereof and set forth on Schedule 17.2(r) or as permitted under or contemplated by this Agreement or any of the other Transaction Agreements, BT will have caused (1) the BT Sellers not to have sold, transferred or otherwise have disposed of any BT Assets, and the Contributed BT Subsidiaries not to have sold, transferred or otherwise have disposed of any of their Assets, with a total value of more than \$250 million in the aggregate, other than in the ordinary course of business or (2) the BT Sellers not to have created any Lien, except a Permitted Lien, on the BT Assets other than in the ordinary course of business or the Contributed BT Subsidiaries not to have created any Lien, except a Permitted Lien, on any of their Assets other than in the ordinary course of business;

(v) BT will have caused all transactions involving BT and any of its Affiliates, on the one hand, and the Contributed BT Subsidiaries, on the other hand, or otherwise involving BT and its Affiliates and the BT GCS Business to have been on an arm's length basis;

(vi) subject to the terms and conditions of this Agreement, to any effects arising principally from having entered into the Term Sheet, this Agreement or the other Transaction Agreements and consistent with operating in the ordinary course, BT will have used, and will have caused the BT Sellers

and the Contributed BT Subsidiaries to have used, its or their reasonable commercial efforts to preserve the BT GCS Business intact, and to preserve the goodwill of customers, suppliers and others having business relations with the BT GCS Business; and

(vii) BT will have caused the BT Sellers in respect of the BT GCS Business and the Contributed BT Subsidiaries not to have agreed to take any action or refrain from taking any action with respect to the BT GCS Business described in this Section 17.2(r).

(s) **Cables.** There is no fault with the functionality or operation of any cable used in the BT GCS Business that detrimentally affects the quality of services being supplied to customers or the on-going cost of maintenance and support of such cable in comparison with other equivalent cables, except for such faults that would not individually or in aggregate have a BT GCS Business MAE.

(t) **Intercompany Agreements; Purchase of MCI's Interest in Concert.** Except as set forth on Schedule 17.2(t), none of Concert Holdings, Concert, any other Contributed BT Subsidiary or any of their Subsidiaries, on the one hand, is a party to any agreement or arrangement with BT or any of its Affiliates (other than Concert or one or more of its Subsidiaries), or MCI or MCI-WorldCom or any of their Affiliates, on the other hand. Except as set forth on Schedule 17.2(t), none of the agreements or arrangements entered into by either BT or Concert or any of their respective Affiliates in connection with the purchase of the Purchased Shares will impose any Liabilities upon Concert or any of its Affiliates which, individually or in the aggregate, are material to Concert, or would, individually or in the aggregate,

have a material adverse effect on the business, operations or financial condition of Concert. Except as set forth on Schedule 17.2(t), none of BT IntermediateCo, Concert Holdings or any other Contributed BT Subsidiary is subject to any Liabilities that did not arise in the ordinary course of conduct of their Global Business Communications Services business.

(u) Concert Distributions; Indebtedness.

(i) Since March 31, 1998 and through to the Closing, none of BT IntermediateCo, Concert Holdings or any of their Subsidiaries has or will have (x) declared, paid or made any dividends or other distributions on its outstanding share capital, or (y) redeemed, retired, purchased, or otherwise acquired for value any shares of any of its classes of share capital.

(ii) From March 31, 1998 to the date hereof, (x) Concert was operated in the ordinary course of business other than any matter resulting from or relating to Concert's restructuring of its relationship with MCI (and for these purposes the change-over from leasing to owning circuits shall be deemed to be in the ordinary course of business), and (y) Concert has not created, incurred or assumed long-term or short-term Indebtedness or assumed, guaranteed, endorsed or otherwise become liable or responsible (whether directly, contingently or otherwise) for any material obligations of any other Person, except to fund losses and to invest in Concert's business to operate such business in the ordinary course as such ordinary course is described in the preceding clause (x). As of September 30, 1998, the net debt

of Concert was not greater than 65.15 million pounds sterling, as shown on the attached Schedule 17.2(u).

For purposes of this Section 17.2(u) only, a breach of this representation shall be remedied by BT by a payment of cash to Concert, or a cancellation of Indebtedness owed by Concert to BT, in an amount equal to any Indebtedness above the level provided in the preceding sentence.

(v) **Organization and Standing.** Thistle BV is a *Besloten Vennootschap* duly organized under the laws of The Netherlands, and has all requisite corporate power and corporate authority necessary to enable it to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted.

(w) **Share Capital of Thistle BV.** The total authorized share capital of Thistle BV is NLG 200,000, divided into 2,000 shares with a nominal value of NLG 100 per share, of which 400 shares have been issued to, and are registered in the name of, BT Holdings. Thistle BV is a wholly-owned Subsidiary of BT Holdings.

(x) **No Operations.** Except for obligations or liabilities incurred in connection with the costs and expenses of its incorporation or organization and with the transactions contemplated in the Transaction Agreements and the Local Purchase Agreements, Thistle BV has not incurred any obligations or liabilities or engaged in any business or activities of any type or entered into any agreements or arrangements with any Person.

(y) **Thistle BV Authorization; Validity.** Thistle BV has all requisite corporate power and corporate authority to execute and deliver this Agreement and the IPR Agreement, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Thistle BV will have at the Closing all requisite corporate power and corporate authority to execute and deliver the Transaction Agreements and the Local Purchase Agreements to be executed by it on or prior to the Closing, to perform its obligations under such other Transaction Agreements and such Local Purchase Agreements to which it is a party and to consummate the transactions contemplated thereby. The execution, delivery and performance by Thistle BV of this Agreement and the IPR Agreement, and the consummation by Thistle BV of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Thistle BV. The execution, delivery and performance of Thistle BV of the Transaction Agreements and the Local Purchase Agreements to be executed by it on or prior to the Closing, and the consummation of the transactions contemplated thereby, will, prior to such execution and delivery, be duly authorized by all necessary corporate action on the part of Thistle BV and no other corporate proceedings or action on the part of Thistle BV or its Management Board or shareholders will be necessary therefor. This Agreement and the IPR Agreement have been, and the Transaction Agreements and the Local Purchase Agreements to be executed by Thistle BV on or prior to the Closing will, when executed and delivered, be, duly executed and delivered by Thistle BV. This Agreement and the IPR Agreement constitute, and the other Transaction Agreements and the Local Purchase

Agreements to be executed by Thistle BV on or prior to the Closing will, when duly executed and delivered, constitute, legal, valid and binding obligations of Thistle BV, enforceable against it in accordance with their respective terms.

(z) **Thistle BV No Conflicts.** Except as set forth on Schedule 17.2(z), the execution, delivery and performance by Thistle BV of this Agreement and the IPR Agreement, the consummation of the transactions contemplated hereby and thereby and the compliance with the terms hereof and thereof do not, and the execution, delivery and performance by Thistle BV of the other Transaction Agreements and the Local Purchase Agreements to be executed by it on or prior to the Closing, the consummation of the transactions contemplated by such Transaction Agreements and such Local Purchase Agreements and compliance with the terms of such Transaction Agreements and such Local Purchase Agreements will not at the Closing, conflict with, or constitute or result in any Default under (i) any provision of the Thistle BV Charter Documents, (ii) any order, arbitration award, judgment, injunction or decree against, or binding upon, Thistle BV or upon its properties or businesses, (iii) any instrument, contract, mortgage, charge or other agreement to which it is bound, or by which any of its Assets is bound, or (iv) under any Applicable Law with respect to Thistle BV or any of its Assets (except, with respect to clauses (ii), (iii) and (iv), for such conflicts or Defaults that, individually or in the aggregate, would not have a material effect on the ability of Thistle BV to perform in all material respects its obligations under this Agreement and the other Transaction Agreements and the Local Purchase Agreements to which it is a party in

accordance with their respective terms and would not have a Venture Business Material Adverse Effect).

(aa) **Litigation; Orders.** There are no Actions pending or, to BT's knowledge, threatened against Thistle BV that would individually or in the aggregate have a Venture Business Material Adverse Effect or prohibit the Contribution or the transactions contemplated hereby or by any of the other Transaction Agreements. There are no judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a court or administrative agency, or by arbitration) against Thistle BV that would individually or in the aggregate have a Venture Business Material Adverse Effect or that would prohibit the Contribution or the transactions contemplated hereby or by any of the other Transaction Agreements.

ARTICLE 18

COVENANTS

18.1 Conduct of AT&T GCS Business; Conduct of BT GCS Business.

(a) Except as otherwise provided herein, nothing in this Agreement shall be construed or interpreted to (x) limit or prevent the AT&T Sellers or any of the Contributed AT&T Subsidiaries prior to the Closing Date from (i) making or accepting intercompany advances to, from or with one another or with AT&T or any of its Affiliates or (ii) engaging in any transaction incident to the normal cash management procedures of AT&T and its Affiliates, including short-term investments in bank deposits, money market instruments, time deposits, certificates of deposit and bankers' acceptances and borrowings for working capital purposes and purposes of

providing additional funds to the AT&T Sellers and the Contributed AT&T Subsidiaries in the ordinary course of business; provided, that, none of such actions would have an AT&T GCS Business MAE or (y) limit or prevent (i) transfers of assets or liabilities by AT&T or its Affiliates to facilitate the transfer of the AT&T Assets to the Newco Group at the Closing, (ii) other activities of AT&T and its Affiliates undertaken in connection with provisioning for the transition period pursuant to the Transition Plan before the establishment of the Newco Group and for the establishment of the Newco Group, and (iii) activities undertaken by AT&T or any of its Affiliates in connection with the withdrawal from the alliances set forth on Schedule 18.9 or in connection with the formation of ConsumerCo.

(b) Except as otherwise provided herein, nothing in this Agreement shall be construed or interpreted to (x) limit or prevent the BT Sellers or any of the Contributed BT Subsidiaries prior to the Closing Date from (i) making or accepting intercompany advances to, from or with one another or with BT or any of its Affiliates or (ii) engaging in any transaction incident to the normal cash management procedures of BT and its Affiliates, including short-term investments in bank deposits, money market instruments, time deposits, certificates of deposit and bankers' acceptances and borrowings for working capital purposes and purposes of providing additional funds to the BT Sellers and the Contributed BT Subsidiaries in the ordinary course of business; provided, that, none of such actions would have a BT GCS Business MAE or (y) limit or prevent (i) transfers of assets or liabilities by BT or its Affiliates to facilitate the transfer of the BT Assets to the Newco Group at the Closing, (ii) other activities of BT and its Affiliates undertaken in connection with

provisioning for the transition period pursuant to the Transition Plan before the establishment of the Newco Group and for the establishment of the Newco Group, and (iii) activities undertaken by BT, Concert or any of their Affiliates in connection with the withdrawal of MCI from Concert.

(c) AT&T and BT shall cause the representations and warranties set forth in Sections 17.1(r) and 17.2(r), respectively, to be true and correct in all material respects on and as of the Closing.

18.2 No Amendments. None of Concert, BT or any of their Affiliates shall (a) enter into or agree to any material amendment, by supplement or otherwise, to the provisions of the MCI-WorldCom Distribution Agreement or (b) extend or agree to extend the two year term or the three year run-off period thereof.

18.3 EU Merger Regulation. From the date of this Agreement, each parent shall use its Best Efforts to secure that the transactions contemplated hereby will be considered by the European Commission under the European Merger Control Regulation, including the procedures and timetable provided for in Council Regulation EEC No. 4064/89 and its associated regulations (each as amended) (collectively, the "EU Merger Regulations"); provided, however, that neither the foregoing nor the provisions of Section 20.3 shall (a) limit or restrict the parents' ability to negotiate the terms of any Transaction Agreement to the extent not agreed on the date hereof, or (b) require either parent to agree to any material change to (i) the structure of the Newco Group as described in Schedule 2.2, (ii) the Initial Contributed Assets, or (iii) any important restriction, modification, limitation or reduction of the second

sentence of Section 11.6, including any applicable exceptions thereto, or any other material term of this Agreement or any other Transaction Agreement.

18.4 Governmental Approvals.

(a) Subject to Sections 19.2 and 19.3, from the date of this Agreement, each parent shall use its Best Efforts to obtain the Governmental Approvals set forth in Schedule 17.1(d) and Schedule 17.2(d) (collectively, the “Key Governmental Approvals”) necessary for the parents, Thistle BV and their Subsidiaries to consummate the transactions contemplated by the Transaction Agreements within 12 months from the date hereof; provided, however, that, whether in connection with any discussions with any Governmental Body or in connection with any Governmental Approval with respect to the transactions contemplated hereby or otherwise, (i) the obligations of the parents to use Best Efforts shall not limit or restrict the parents’ ability to negotiate the terms of any Transaction Agreement to the extent not agreed on the date hereof, (ii) neither parent shall be required to agree to any important restriction, modification, limitation or reduction of the second sentence of Section 11.6, including any applicable exceptions thereto, (iii) without limiting clause (ii), the exclusion for Material Adverse Effect in the definition of “Best Efforts” shall apply to and shall be deemed to include any restriction, condition, burden or detriment applicable to a parent’s own business or on the proposed Venture Business, and (iv) neither BT nor any of its Subsidiaries shall be required to take any of the actions or provide any of the services described in Schedule 18.4. Any Key Governmental Approval that is granted or proposed subject to any of the matters referred to in the proviso to the preceding sentence or which would have a Material

Adverse Effect on the applicable parent's own business or on the proposed Venture Business shall be deemed to contain a "**Burdensome Condition**."

(b) From the date of this Agreement, the parents shall make or cause to be made available all information reasonably requested by the other parent to permit all necessary filings and notices to the European Commission to be made within one week following the execution of this Agreement, and, with respect to filings and notifications in the United States and elsewhere, as promptly as practicably following the execution hereof. The parents shall promptly furnish or cause to be furnished all information and documents reasonably required by the relevant Governmental Bodies, and make or cause to be made available staff to give evidence to such Governmental Bodies, in each case as appropriate in order to obtain the Key Governmental Approvals.

(c) At all times prior to the Closing, the parents shall cooperate and coordinate with each other, as appropriate, with respect filings and notifications to Governmental Bodies in connection with obtaining Governmental Approvals for the transactions contemplated hereby.

18.5 **Access**. From the date of this Agreement until the Closing Date, each parent shall give to the other parent and its representatives reasonable access during normal business hours to the properties, books and records of such parent and its Affiliates to the extent relating to the Initial Contributed Assets and the Assumed Liabilities and furnish each other with all such information concerning the AT&T GCS Business or the BT GCS Business, as the case may be, as the other parent may reasonably request, subject to appropriate confidentiality restrictions and restrictions